

105TH CONGRESS
1ST SESSION

H. R. 2441

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discriminations claims made by Federal employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1997

Mr. MARTINEZ (for himself, Ms. NORTON, Mr. CUMMINGS, Mr. WYNN, and Mr. FORD) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discriminations claims made by Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employee
5 Fairness Act of 1997”.

1 **SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DE-**
2 **TERMINATION OF FEDERAL EMPLOYEE DIS-**
3 **CRIMINATION CLAIMS.**

4 (a) DEFINITIONS.—Section 701 of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000e) is amended—

6 (1) in paragraph (f) by striking “The term”
7 and inserting “Except when it appears as part of the
8 term ‘Federal employee’, the term”, and

9 (2) by adding at the end the following:

10 “(o) The term ‘administrative judge’ includes an ad-
11 ministrative law judge appointed under section 3105 of
12 title 5 of the United States Code.

13 “(p) The term ‘Commission’ means the Equal Em-
14 ployment Opportunity Commission.

15 “(q) The term ‘entity of the Federal Government’
16 means an entity to which section 717(a) applies, except
17 that such term does not include the Library of Congress.

18 “(r) The term ‘Federal employee’ means an individ-
19 ual employed by, or who applies for employment with, an
20 entity of the Federal Government.

21 “(s) The term ‘Federal employment’ means employ-
22 ment by an entity of the Federal Government.

23 “(t) The terms ‘government’, ‘government agency’,
24 and ‘political subdivision’ do not include an entity of the
25 Federal Government.”.

1 (b) EEOC DETERMINATION OF FEDERAL EMPLOY-
2 MENT DISCRIMINATION CLAIMS.—Section 717 of the Civil
3 Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

4 (1) in subsection (b)—

5 (A) by inserting “(1)” after “(b)”,

6 (B) in the second sentence—

7 (i) by redesignating paragraphs (1),
8 (2), and (3), as subparagraphs (A), (B),
9 and (C), respectively,

10 (ii) in the subparagraph (B), as so re-
11 designated, by striking “and” at the end,

12 (iii) in subparagraph (C), as so redes-
13 igned, by striking the period at the end
14 and inserting “; and”, and

15 (iv) by inserting after subparagraph
16 (C), as so redesignated, the following:

17 “(D) require each entity of the Federal Govern-
18 ment—

19 “(i) to make counseling available to Fed-
20 eral employees who believe such entity has dis-
21 criminated against them in violation of this sec-
22 tion, for the purpose of trying to resolve the
23 matters with respect to which such discrimina-
24 tion is alleged (Such entity shall assist such em-
25 ployee to identify the respondent required by

1 subsection (c)(1) to be named in a complaint al-
2 leging such violation, shall inform such Federal
3 employee individually of the procedures and
4 deadlines that apply under this section to a
5 claim alleging such discrimination, and shall
6 make such counseling available throughout the
7 administrative process.);

8 “(ii) to establish a voluntary alternative
9 dispute resolution process to resolve complaints,
10 except that a Federal employee’s decision to
11 forgo such process shall not affect the rights of
12 such employee under this title;

13 “(iii) not to discourage Federal employees
14 from filing complaints on any matter relating to
15 discrimination in violation of this section;

16 “(iv) not to require Federal employees to
17 participate in conciliation made available under
18 subsection (c)(1)(A)(ii) unless such entity has
19 an alternative dispute resolution process ap-
20 proved by the Commission as described in such
21 subsection; and

22 “(v) not to require Federal employees to
23 participate in a dispute resolution process made
24 available under clause (ii).

1 “(2)(A) A Federal employee who believes that an en-
 2 tity of the Federal Government has discriminated against
 3 such employee in violation of this section, to whom sub-
 4 section (c)(1)(A)(ii) applies, who has requested such entity
 5 to provide the conciliation described in subsection
 6 (c)(1)(A)(ii), and who is the subject of, or about to be
 7 the subject of, a personnel action to be taken against such
 8 employee as a result of expressing that belief or requesting
 9 such conciliation may file with the Commission a request
 10 for a stay of such personnel action, together with an affi-
 11 davit made by such employee in support of such request.

12 “(B) Immediately after receiving such request so sup-
 13 ported, the Commission shall appoint an administrative
 14 judge to review such request. Subsection (f)(3) shall apply
 15 with respect to such review and to the issuance of a stay
 16 requested under subparagraph (A).”.

17 (C) in the third sentence by striking “The”
 18 and inserting the following:

19 “(3) The”,

20 (D) in the fourth sentence by redesignating
 21 paragraphs (1) and (2) as subparagraphs (A)
 22 and (B), respectively,

23 (E) in the last sentence by striking “With”
 24 and inserting the following:

25 “(4) With”, and

1 (F) by adding at the end the following:

2 “(4)(A) Subject to subparagraph (B), an unlawful
3 employment practice of the kind described in section
4 704(a) is established under this section if an employee or
5 applicant for employment demonstrates that his opposing
6 any practice made an unlawful employment practice by
7 this title, his making a charge, testifying, assisting, or par-
8 ticipating in any manner in an investigation, proceeding,
9 or hearing under this title, or his communicating with the
10 Congress regarding discrimination in violation of this sec-
11 tion was a contributing factor in an adverse personnel ac-
12 tion that was taken or is to be taken against such em-
13 ployee or applicant.

14 “(B) On a claim in which a Federal employee proves
15 a violation under subparagraph (A) and a respondent
16 demonstrates, on the basis of the evidentiary standard
17 specified in section 1221(e)(2) of title 5 of the United
18 States Code, that the respondent would have taken the
19 same personnel action in the absence of the impermissible
20 motivating factor, the court—

21 “(i) may grant declaratory relief, injunctive re-
22 lief (except as provided in clause (ii)), and attorney’s
23 fees and costs demonstrated to be directly attrib-
24 utable only to the pursuit of a claim under subpara-
25 graph (A); and

1 “(ii) shall not award damages or issue an order
2 requiring any admission, reinstatement, hiring, pro-
3 motion, or payment not described in clause (i).”,

4 (2) by striking subsection (c),

5 (3) in subsection (d)—

6 (A) by inserting “(1)” after “(d)”,

7 (B) by striking “(k)” and inserting “(j)”,

8 (C) by striking “brought hereunder” and
9 inserting “commenced under this section”, and

10 (D) by adding at the end the following:

11 “(2) The head of the department, agency, or unit in
12 which discrimination in violation of this section is alleged
13 to have occurred shall be the defendant in a civil action
14 alleging such violation. If a department, unit, or agency
15 is named as the defendant, the court shall freely grant
16 leave to amend the complaint to name the head of such
17 department, agency, or unit.

18 “(3)(A) In any action or proceeding under this sec-
19 tion, the court, in its discretion, may allow the prevailing
20 party (other than an entity of the Federal Government)
21 a reasonable attorney’s fee (including expert fees) and
22 costs as a court has authority to award under section
23 706(k), as amended from time to time, and the same inter-
24 est to compensate for delay in payment as in cases involv-
25 ing nonpublic parties.

1 “(B) If an action brought under this section by or
2 on behalf a Federal employee is found by the court to be
3 unreasonable, groundless, or vexatious, the court, in its
4 discretion, may allow the respondent a reasonable attor-
5 ney’s fee (including expert fees), costs, and interest as a
6 court has authority to award in an action to a prevailing
7 party under subparagraph (A).”,

8 (4) by redesignating subsections (d) and (e) as
9 subsections (o) and (p), respectively, and

10 (5) by inserting after subsection (b) the follow-
11 ing:

12 “(c)(1)(A) Except as provided in subparagraphs (B),
13 (C), (D), and (E), a complaint filed by or on behalf of
14 a Federal employee or a class of Federal employees and
15 alleging a claim of discrimination arising under this sec-
16 tion shall name as the respondent, and be filed with, the
17 head of the department, agency, or unit in which such dis-
18 crimination is alleged to have occurred, or with the Com-
19 mission—

20 “(i) not later than 180 days after the alleged
21 discrimination occurs, except as provided in clause
22 (ii); and

23 “(ii) in the case of a respondent that provides
24 to such employee a voluntary alternative dispute res-
25 olution process approved by the Commission in ac-

1 cordance with rules issued by the Commission under
2 section 6(a)(4) of the Federal Employee Fairness
3 Act of 1997, after the expiration of the 20-day pe-
4 riod beginning on the date the Federal employee
5 specifically named in the complaint (or an individual
6 authorized to represent such Federal employee or
7 both) requests and offers to meet once with an indi-
8 vidual authorized to represent the respondent in ac-
9 cordance with subparagraph (B) to engage in the
10 precomplaint conciliation approved under such sec-
11 tion by the Commission to be provided by the re-
12 spondent, except that such 20-day period shall be
13 excluded for purposes calculating such 180 days.

14 “(B) For purposes of subparagraph (A)(ii)—

15 “(i) conciliation shall occur during the regular
16 working hours of such Federal employee; and

17 “(ii) an individual may not be authorized to
18 represent the respondent if such individual—

19 “(I) has or has had any involvement in the
20 circumstances relating to any of such claims; or

21 “(II) has or has had supervisory authority
22 over such Federal employee.

23 “(C) If, not later than 180 days (determined under
24 subparagraph (A)) after the alleged discrimination occurs,
25 the complaint is filed—

1 “(i) with such department, agency, or unit and
2 fails to name the head of the department, agency, or
3 unit as the respondent; or

4 “(ii) except as provided in subparagraph (E),
5 with any other entity of the Federal Government, re-
6 gardless of the respondent named;

7 the complaint shall be considered to be filed in compliance
8 with subparagraph (A).

9 “(D) A complaint filed under this section with respect
10 to a claim of discrimination arising under this section shall
11 be dismissed if—

12 “(i) such claim is a grievance that is subject to
13 section 7121 of title 5, United States Code; and

14 “(ii) the aggrieved Federal employee has, in the
15 discretion of the Federal employee, exercised the op-
16 tion under section 7121(d) of such title to raise the
17 matter under the negotiated grievance procedure be-
18 fore filing the complaint.

19 “(E) A complaint filed by or on behalf of a Federal
20 employee, or a class of Federal employees, employed by
21 a department, agency, or unit in the intelligence commu-
22 nity (as defined by Executive Order 12333 or any succes-
23 sor to such order) and alleging a claim of discrimination
24 arising under this section shall be filed with the depart-
25 ment, agency, or unit in which such discrimination is al-

1 leged to have occurred not later than 180 days (deter-
2 mined under subparagraph (A)) after the alleged discrimi-
3 nation occurs.

4 “(2) If the complaint is filed with an entity of the
5 Federal Government other than the department, agency,
6 or unit in which such discrimination is alleged to have oc-
7 curred, then—

8 “(A) such entity (other than the Commission)
9 shall transmit the complaint to the Commission, not
10 later than 10 days after receiving the complaint; and

11 “(B) the Commission shall transmit a copy of
12 the complaint, not later than 10 days after receiving
13 the complaint, to the head of the department, agen-
14 cy, or unit in which such discrimination is alleged to
15 have occurred (hereinafter in this section referred to
16 as the ‘respondent’).

17 “(3) Not later than 10 days after the respondent re-
18 ceives the complaint from a source other than the Com-
19 mission, the respondent shall transmit to the Commission
20 a copy of the complaint.

21 “(d) Throughout the period beginning on the date the
22 respondent receives the complaint and ending on the latest
23 date by which all administrative and judicial proceedings
24 available under this section have been concluded with re-
25 spect to such claim, the respondent shall collect and pre-

1 serve documents and information (including the com-
2 plaint) that are relevant to such claim, including the docu-
3 ments and information that comply with rules issued by
4 the Commission.

5 “(e)(1) The respondent shall make reasonable efforts
6 to conciliate each claim alleged in the complaint beginning
7 on the date the complaint is filed under subsection (c).
8 After the complaint is filed, the respondent shall promptly
9 inform such Federal employee individually of the proce-
10 dures and deadlines that apply under this section to a
11 claim alleging such discrimination.

12 “(2)(A) With respect to such claim, the respondent
13 may enter into a settlement agreement with such Federal
14 employee.

15 “(B) The entity of the Federal Government with
16 which the complaint is filed under subsection (c) shall im-
17 mediately give formal written notice to such Federal em-
18 ployee that such Federal employee may either—

19 “(i) before the expiration of the 90-day period
20 beginning on the date such Federal employee re-
21 ceives such notice, file with the Commission—

22 “(I) a written request for a determination
23 of such claim under subsection (f) by an admin-
24 istrative judge of the Commission, together
25 with, at the option of such Federal employee, a

1 request that the administrative judge request a
2 stay described in subsection (f)(3)(A);

3 “(II) if such claim alleges discrimination in
4 the Commission or alleges an action appealable
5 to the Merit Systems Protection Board, a writ-
6 ten request electing that a determination of
7 such claim be made under the procedures speci-
8 fied in either subparagraph (A) or (B) of sec-
9 tion 7702(a)(2) of title 5, United States Code,
10 or a request described in subclause (I); or

11 “(III) if such claim alleges a grievance
12 that is subject to section 7121 of title 5, United
13 States Code, but not appealable to the Merit
14 Systems Protection Board, a written request to
15 raise such claim under the administrative and
16 judicial procedures provided in such section
17 7121 or a request described in subclause (I); or

18 “(ii) in the 90-day period beginning on the date
19 the complaint is filed under subsection (c) or in the
20 90-day period beginning on the date such Federal
21 employee receives such notice (whichever 90-day pe-
22 riod begins later), commence a civil action in an ap-
23 propriate district court of the United States for de
24 novo review of such claim.

25 “(3)(A) Such Federal employee may either—

1 “(i) file a written request described in clause (i)
2 of paragraph (2)(B) at any time before the expira-
3 tion of the 90-day period specified in clause (i) of
4 such paragraph; or

5 “(ii) commence a civil action described in clause
6 (ii) of such paragraph before the expiration of the
7 applicable 90-day period specified in paragraph
8 (2)(B)(ii).

9 “(B) If such Federal employee files a written request
10 under subclause (II) or (III) of paragraph (2)(B)(i) and
11 in accordance with subparagraph (A)(i), the Commission
12 shall transmit the complaint, not later than 10 days after
13 the Commission receives the complaint, to the appropriate
14 agency for determination.

15 “(f)(1) If such Federal employee files a written re-
16 quest under subsection (e)(2)(B)(i)(I) and in accordance
17 with subsection (e)(3)(A) with the Commission for a deter-
18 mination under this subsection of a claim with respect to
19 which notice is required by subsection (e)(2), then the
20 Commission shall transmit a copy of such request to the
21 respondent and, not later than 10 days after receiving
22 such request, shall appoint an administrative judge of the
23 Commission to determine such claim. If such request in-
24 cludes a request for a stay described in paragraph (3)(A),

1 then the Commission shall appoint an administrative
2 judge immediately after receiving such request.

3 “(2) Not later than 5 days after receiving a copy of
4 a request under subsection (e)(2)(B)(i), the respondent
5 shall transmit—

6 “(A) to the Commission if such request is for
7 a determination under this subsection; or

8 “(B) to the Merit Systems Protection Board if
9 such request is for a determination be made under
10 the procedures specified in section 7702(a)(2)(A) of
11 title 5, United States Code;

12 a copy of all documents and information collected by the
13 respondent under subsection (d) with respect to such
14 claim.

15 “(3)(A) The administrative judge, in accordance with
16 rules issued by the Commission, may request any member
17 of the Commission to order a stay of any personnel action
18 for 45 days if the administrative judge determines that
19 there are reasonable grounds to believe that the personnel
20 action was taken for discriminatory or retaliatory reasons
21 prohibited under this section.

22 “(B)(i) Any member of the Commission requested
23 under subparagraph (A) to order a stay shall order such
24 stay unless the member determines that, under the facts

1 and circumstances involved, such a stay does not comply
2 with such rules or otherwise would not be appropriate.

3 “(ii) Unless denied under clause (i), any stay re-
4 quested under subparagraph (A) shall be deemed to be
5 ordered on the third calendar day (excluding Saturdays,
6 Sundays, and legal holidays) after the date of the request.

7 “(C) If a stay is ordered under subparagraph (B),
8 the member who received the request for such stay may
9 terminate such stay at any time after giving notice, and
10 an opportunity for oral or written comments, to the ag-
11 grieved Federal employee on whose behalf such stay was
12 ordered.

13 “(D)(i) The Commission may extend the period of
14 any stay granted under subparagraph (B) for any period
15 that the Commission considers appropriate.

16 “(ii) Members of the Commission shall allow any en-
17 tity of the Federal Government that would be subject to
18 a stay, or to the extension of a stay, to comment to such
19 members and the Commission on the request for such stay
20 and on a request for such extension.

21 “(iii) The respondent shall comply with a stay in ef-
22 fect under this section.

23 “(4) The administrative judge shall determine wheth-
24 er the documents and information received under para-
25 graph (2) comply with subsection (d) and are complete

1 and accurate. If the administrative judge finds that the
2 respondent has failed to produce the documents and infor-
3 mation necessary to comply with such subsection, the ad-
4 ministrative judge shall, in the absence of good cause
5 shown by the respondent, impose any of the sanctions
6 specified in paragraph (6)(C) and shall require the re-
7 spondent—

8 “(A) to obtain any additional documents and
9 information necessary to comply with such sub-
10 section; and

11 “(B) to correct any inaccuracy in the docu-
12 ments and information so received.

13 “(5)(A) After examining the documents and informa-
14 tion received under paragraph (4), the administrative
15 judge shall issue an order dismissing—

16 “(i) any frivolous claim alleged in the com-
17 plaint;

18 “(ii) any claim of a Federal employee who fails
19 to comply with subsection (c)(1)(A)(ii) if applicable
20 to such employee; and

21 “(iii) the complaint if it fails to state a non-
22 frivolous claim for which relief may be granted
23 under this section.

24 “(B)(i) If a claim or the complaint is dismissed under
25 subparagraph (A), the administrative judge shall give for-

1 mal written notice to the aggrieved Federal employee that
2 such Federal employee may, before the expiration of the
3 90-day period beginning on the date such Federal em-
4 ployee receives such notice—

5 “(I) file with the Commission a written request
6 for appellate review of such order; or

7 “(II) commence a civil action in an appropriate
8 district court of the United States for de novo review
9 of such claim or the complaint.

10 “(ii) Such Federal employee may commence such civil
11 action after the dismissal of such claim or the complaint
12 and before the expiration of the 90-day period specified
13 in clause (i).

14 “(6)(A)(i) If the complaint is not dismissed under
15 paragraph (5)(A), the administrative judge shall make a
16 determination, after an opportunity for a hearing, on the
17 merits of each claim that is not dismissed under such
18 paragraph. The administrative judge shall make a deter-
19 mination on the merits of any other nonfrivolous claim
20 under this section, and on the merits of any action such
21 Federal employee may appeal to the Merit Systems Pro-
22 tection Board, reasonably expected to arise from the facts
23 on which the complaint is based.

24 “(ii) On the request of the aggrieved Federal em-
25 ployee, the administrative judge shall—

1 “(I) determine whether the administrative pro-
2 ceeding with respect to such claim may be main-
3 tained as a class proceeding; and

4 “(II) if the administrative proceeding may be so
5 maintained, shall describe those whom the adminis-
6 trative judge finds to be members of such class.

7 “(B) With respect to such claim, a party may conduct
8 discovery by such means as may be available in a civil ac-
9 tion to the extent deemed appropriate by the administra-
10 tive judge.

11 “(C) If the aggrieved Federal employee or the re-
12 spondent fails without good cause to respond fully and in
13 a timely fashion to a request made or approved by the
14 administrative judge for information or the attendance of
15 a witness, and if such information or such witness is solely
16 in the control of the party who so fails to respond, then
17 the administrative judge shall—

18 “(i) draw an adverse inference that the re-
19 quested information, or the testimony of the re-
20 quested witness, would have reflected unfavorably on
21 the party who so fails to respond;

22 “(ii) consider the matters to which such infor-
23 mation or such testimony pertains to be established
24 in favor of the opposing party;

1 “(iii) exclude other evidence offered by the
2 party who so fails to respond;

3 “(iv) grant full or partial relief, including—

4 “(I) relief of the kinds described in section
5 706(g); and

6 “(II) compensatory damages for unlawful
7 intentional discrimination (not an employment
8 practice that is unlawful because of its dispar-
9 ate impact) prohibited under this section, sub-
10 ject to the limitations specified in section
11 1977A(b)(3) of the Revised Statutes of the
12 United States;

13 to the aggrieved Federal employee; or

14 “(v) take such other action the administrative
15 judge considers to be appropriate.

16 “(D) In a hearing on a claim, the administrative
17 judge shall—

18 “(i) limit attendance to persons who have a di-
19 rect connection with such claim;

20 “(ii) bring out pertinent facts and relevant em-
21 ployment practices and policies, and ensure that the
22 record is developed for a full and fair determination
23 of such claim, but exclude irrelevant or unduly rep-
24 etitious information;

1 “(iii) permit all parties to examine and cross
2 examine witnesses; and

3 “(iv) require that testimony be given under
4 oath or affirmation.

5 “(E) At the request of any party or the administra-
6 tive judge, a transcript of all or part of such hearing shall
7 be provided in a timely manner and simultaneously to the
8 parties and the Commission. The respondent shall bear
9 the cost of providing such transcript.

10 “(F) The administrative judge shall have authority—

11 “(i) to administer oaths and affirmations;

12 “(ii) to regulate the course of hearings;

13 “(iii) to rule on offers of proof and receive evi-
14 dence;

15 “(iv) to issue subpoenas to compel—

16 “(I) the production of documents or infor-
17 mation by the entity of the Federal Government
18 in which discrimination is alleged to have oc-
19 curred; and

20 “(II) the attendance of witnesses who are
21 Federal officers or employees of such entity;

22 “(v) to request the Commission to issue subpoe-
23 nas to compel the production of documents or infor-
24 mation by any other entity of the Federal Govern-
25 ment or by the aggrieved Federal employee, and the

1 attendance of other witnesses, except that any wit-
2 ness who is not an officer or employee of an entity
3 of the Federal Government may be compelled only
4 to attend any place—

5 “(I) less than 100 miles from the place
6 where such witness resides, is employed, trans-
7 acts business in person, or is served; or

8 “(II) at such other convenient place as is
9 fixed by the administrative judge;

10 and shall be paid fees and allowances, by the party
11 that requests the subpoena, to the same extent that
12 fees and allowances are paid to witnesses under
13 chapter 119 of title 28, United States Code, as
14 amended from time to time;

15 “(vi) to exclude witnesses whose testimony
16 would be unduly repetitious;

17 “(vii) to exclude any person from a hearing for
18 contumacious conduct, or for misbehavior, that ob-
19 structs such hearing; and

20 “(viii) to grant full or partial relief, including—

21 “(I) relief of the kinds described in section
22 706(g); and

23 “(II) compensatory damages for unlawful
24 intentional discrimination (not an employment
25 practice that is unlawful because of its dispar-

1 ate impact) prohibited under this section, sub-
2 ject to the limitations specified in section
3 1977A(b)(3) of the Revised Statutes of the
4 United States.

5 “(G) The administrative judge and the Commission
6 shall have authority to award to a prevailing party (other
7 than an entity of the Federal Government)—

8 “(i) a reasonable attorney’s fee (including ex-
9 pert fees) and costs as a court has authority to
10 award under section 706(k), as amended from time
11 to time; and

12 “(ii) the same interest to compensate for delay
13 in payment as in cases involving nonpublic parties.

14 “(H) The Commission shall have authority to issue
15 subpoenas described in subparagraph (F)(v).

16 “(I) In the case of contumacy or failure to obey a
17 subpoena issued under subparagraph (F) or (H), the
18 United States district court for the judicial district in
19 which the person to whom the subpoena is addressed re-
20 sides or is served may issue an order requiring such person
21 to appear at any designated place to testify or to produce
22 documentary or other evidence.

23 “(7)(A) Except as provided in subparagraph (B), the
24 administrative judge shall issue a written order making

1 the determination required by paragraph (6)(A), and
2 granting or denying relief, not later than—

3 “(i)(I) 300 days after the complaint containing
4 such claim is filed by or on behalf of a Federal em-
5 ployee if such complaint is filed in the 1-year period
6 beginning on the effective date of this subsection.

7 “(II) except as provided in subclause (I), 210
8 days after the complaint containing such claim is
9 filed by or on behalf of a Federal employee; or

10 “(ii) 2 years and 30 days after the complaint
11 containing such claim is filed on behalf of a class of
12 Federal employees;

13 except that these time periods shall be extended for 30
14 days if the administrative judge certifies, in writing, that
15 such 30-day period is needed to secure additional docu-
16 ments or information from the respondent to have a com-
17 plete administrative record.

18 “(B) The administrative judge shall issue such order
19 not later than 30 days after the applicable period specified
20 in subparagraph (A) if the administrative judge certifies
21 in writing, before the expiration of such applicable pe-
22 riod—

23 “(i) that such 30-day period is necessary to
24 make such determination; and

1 “(ii) the particular and unusual circumstances
2 that prevent the administrative judge from comply-
3 ing with the applicable period specified in subpara-
4 graph (A).

5 “(C) The administrative judge may apply to the Com-
6 mission to extend any period applicable under subpara-
7 graph (A) or (B) if manifest injustice would occur in the
8 absence of such an extension.

9 “(D) The Commission—

10 “(i) may not grant such extension; or

11 “(ii) shall terminate such extension;

12 if the aggrieved Federal employee shows that such exten-
13 sion would prejudice a claim of, or otherwise harm, such
14 Federal employee.

15 “(E) In addition to findings of fact and conclusions
16 of law, such order shall include formal written notice to
17 each party that before the expiration of the 90-day period
18 beginning on the date such party receives such order—

19 “(i) the aggrieved Federal employee may com-
20 mence a civil action in an appropriate district court
21 of the United States for de novo review of a claim
22 with respect to which such order is issued; and

23 “(ii) unless and until a civil action is com-
24 menced in such 90-day period under clause (i) with
25 respect to such claim, any party may file with the

1 Commission a written request for appellate review
2 of the determination made, and relief granted or de-
3 nied, in such order with respect to such claim.

4 “(F) Such Federal employee may commence such
5 civil action at any time before the expiration of the 90-
6 day period beginning on the date such Federal employee
7 receives an order described in subparagraph (A).

8 “(G) If such order applies to more than one claim
9 and if—

10 “(i) such employee does not commence a civil
11 action in accordance with subparagraph (E)(i); and

12 “(ii) neither party requests appellate review in
13 accordance with subparagraph (E)(ii);

14 with respect to a particular claim, then the determination
15 made, and relief granted, in such order with respect to
16 such particular claim shall be enforceable immediately.

17 “(g)(1) If a party files timely a written request in
18 accordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii)
19 with the Commission for appellate review of the deter-
20 mination made, and relief granted or denied, with respect
21 to a claim in such order, then the Commission shall imme-
22 diately transmit a copy of such request to the other parties
23 involved and to the administrative judge who issued such
24 order.

1 “(2) Not later than 7 days after receiving a copy of
2 such request, the administrative judge shall transmit to
3 the Commission the record of the proceeding on which
4 such order is based, including all documents and informa-
5 tion collected by the respondent under subsection (d).

6 “(3)(A) After allowing the parties to file briefs with
7 respect to such determination, the Commission shall issue
8 a written order with respect to such claim affirming, re-
9 versing, or modifying the applicable provisions of the order
10 of the administrative judge not later than—

11 “(i) 150 days after receiving such request; or

12 “(ii) 30 days after such 150-day period if the
13 Commission certifies in writing, before the expiration
14 of such 150-day period—

15 “(I) that such 30-day period is necessary
16 to review such claim; and

17 “(II) the particular and unusual cir-
18 cumstances that prevent the Commission from
19 complying with clause (i).

20 “(B) The Commission shall affirm the determination
21 made, and relief granted or denied, by the administrative
22 judge with respect to such claim if such determination and
23 such relief are supported by a preponderance of the evi-
24 dence in the record taken as a whole and are otherwise
25 in accordance with law. The Commission shall accord sub-

1 stantial deference to the findings of fact of the administra-
2 tive judge.

3 “(C) In addition to findings of fact and conclusions
4 of law, the Commission shall include in its order formal
5 written notice to the aggrieved Federal employee that, be-
6 fore the expiration of the 90-day period beginning on the
7 date such Federal employee receives such order, such Fed-
8 eral employee may commence a civil action in an appro-
9 priate district court of the United States for de novo re-
10 view of a claim with respect to which such order is issued.

11 “(D) Such Federal employee may commence such
12 civil action at any time before the expiration of the 90-
13 day period beginning on the date such Federal employee
14 receives an order described in subparagraph (A).

15 “(h)(1) In addition to the periods authorized by sub-
16 sections (f)(7)(F) and (g)(3)(D)—

17 “(A) during the period beginning 20 days after
18 the expiration of the applicable period specified in
19 subparagraph (A) or (B) of subsection (f)(7) and
20 ending on the date the administrative judge issues
21 under such subsection an order with respect to such
22 claim; and

23 “(B) during the period beginning 20 days after
24 the expiration of the applicable period specified in
25 subsection (g)(3)(A) and ending on the date the

1 Commission issues under such subsection an order
2 with respect to such claim;
3 such Federal employee may commence a civil action in an
4 appropriate district court of the United States for de novo
5 review of such claim.

6 “(2) Whenever a civil action is commenced timely and
7 otherwise in accordance with this section to determine the
8 merits of a claim arising under this section, the jurisdic-
9 tion of the administrative judge or the Commission (as
10 the case may be) to determine the merits of such claim
11 shall terminate.

12 “(i) A Federal employee who prevails on a claim arising
13 under this section may bring a civil action in an appropriate
14 district court of the United States to enforce—

15 “(1) the provisions of a settlement agreement
16 applicable to such claim;

17 “(2) the provisions of an order issued by an administrative
18 judge under subsection (f)(7)(A) applicable to such claim if—

20 “(A) a request is not filed timely under
21 subsection (g)(1) for appellate review by the
22 Commission; and

23 “(B) a civil action is not commenced timely
24 under subsection (g)(3)(D) for de novo review;
25

1 of such claim; or

2 “(3) the provisions of an order issued by the
3 Commission under subsection (g)(3)(A) applicable to
4 such claim if a civil action is not commenced timely
5 under subsection (g)(3)(D) for de novo review of
6 such claim.

7 “(j) Any amount awarded under this section (includ-
8 ing fees, costs, and interest awarded under subsection
9 (f)(6)(G)), or under title 28 of the United States Code,
10 with respect to a violation of this section, shall be paid
11 by the entity of the Federal Government that violated such
12 subsection from any funds made available to such entity
13 by appropriation or otherwise.

14 “(k)(1) An entity of the Federal Government against
15 which a claim of discrimination is alleged in a complaint
16 filed in an administrative proceeding or a civil action
17 under this section shall grant the aggrieved Federal em-
18 ployee paid administrative leave if otherwise on duty, for
19 time expended in accordance with rules issued by the Com-
20 mission to carry out this section, except that such leave
21 shall include reasonable time for—

22 “(A) preparation of a complaint based on such
23 allegation;

24 “(B) conciliation required by subsection
25 (c)(1)(A)(ii);

1 “(C) responding to requests made by the Com-
2 mission (including administrative judges) or the re-
3 spondent for information; and

4 “(D) attendance at such proceeding or action.

5 “(2) Except as provided in paragraph (1), an entity
6 of the Federal Government shall grant a Federal em-
7 ployee—

8 “(A) paid administrative leave to participate for
9 the benefit of a claimant in an administrative pro-
10 ceeding or civil action commenced under this section
11 to the same extent and under such circumstances as
12 such entity would grant an employee official duty or
13 paid administrative leave to participate for the bene-
14 fit of a Federal entity in an administrative proceed-
15 ing or civil action commenced under this section
16 against such entity; and

17 “(B) other leave to participate for the benefit of
18 a claimant in an administrative proceeding or civil
19 action commenced under this section to the same ex-
20 tent and under such circumstances as such entity
21 would grant an employee other leave to participate
22 for the benefit of a Federal entity in an administra-
23 tive proceeding or civil action commenced under this
24 section against such entity.

1 “(l)(1) In enforcing compliance with an order issued
2 by an administrative judge or the Commission, the Com-
3 mission may make a written determination that—

4 “(A) any officer or employee of the agency, de-
5 partment, or unit charged with complying with such
6 order; or

7 “(B) any officer or employee of the United
8 States determined to be responsible for the failure of
9 the agency, department, or unit to comply with such
10 order;

11 who is not an officer or employee appointed by the Presi-
12 dent by and with the advice and consent of the Senate,
13 shall not be entitled to receive payment for service as an
14 officer or employee for the period during which such order
15 has not been complied with. The Commission shall certify
16 to the Comptroller General of the United States that a
17 determination under this paragraph has been made, and
18 no payment shall be made out of the Treasury of the Unit-
19 ed States for any service specified in such determination.

20 “(2) In enforcing compliance with such order with re-
21 spect to any officer or employee described in subparagraph
22 (A) or (B) of paragraph (1) who is an officer or employee
23 appointed by the President by and with the advice and
24 consent of the Senate, the Commission shall notify the

1 President that such officer or employee has failed to obey
2 such order.

3 “(m) If with respect to the merits of a claim of inten-
4 tional discrimination (other than an employment practice
5 that is unlawful because of its disparate impact) prohib-
6 ited by this section, a Federal employee prevails in a pro-
7 ceeding under subsection (f) or a civil action commenced
8 under this section, then not later than 15 days after issu-
9 ing an order finding liability under this section, the admin-
10 istrative judge or the district court involved shall transmit
11 to the Office of Special Counsel a copy of such order.

12 “(n) This section, as in effect immediately before the
13 effective date of the Federal Employee Fairness Act of
14 1997, shall apply with respect to employment in the Li-
15 brary of Congress.”.

16 **SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-**
17 **PLOYMENT ACT AND THE REHABILITATION**
18 **ACT OF 1973.**

19 (a) ENFORCEMENT BY EEOC.—(1) Section 15 of the
20 Age Discrimination in Employment Act of 1967 (29
21 U.S.C. 633a) is amended—

22 (A) by striking subsections (c) and (d),
23 (B) by inserting after subsection (b) the follow-
24 ing:

1 “(c)(1)(A) Except as provided in subparagraph (B),
2 any individual aggrieved by a violation of subsection (a)
3 of this section may file a complaint with the Commission
4 in accordance with section 717 of the Civil Rights Act of
5 1964.

6 “(B) Subsections (c) and (d) of this section, as in
7 effect immediately before the effective date of the Federal
8 Employee Fairness Act of 1997, shall apply with respect
9 to employment in the Library of Congress.

10 “(2) Except as provided in paragraph (1)(B) and
11 subsection (d), such section 717 shall apply to a violation
12 alleged in a complaint filed under paragraph (1) in the
13 same manner as such section applies to a claim arising
14 under section 717 of such Act.

15 “(d)(1) If an individual aggrieved by a violation of
16 this section does not file a complaint under subsection
17 (c)(1), such individual may commence a civil action—

18 “(A) not less than 30 days after filing with the
19 Commission a notice of intent to commence such ac-
20 tion; and

21 “(B) not more than 2 years after the alleged
22 violation of this section occurs;
23 in an appropriate district court of the United States for
24 de novo review of such violation.

1 “(2) On receiving such notice, the Commission
2 shall—

3 “(A) promptly notify all persons named in such
4 notice as prospective defendants in such action; and

5 “(B) take any appropriate action to ensure the
6 elimination of any unlawful practice.

7 “(3) Section 717(o) of the Civil Rights Act of 1964
8 (42 U.S.C. 2000e–16(o)) shall apply to civil actions com-
9 menced under this subsection in the same manner as such
10 section applies to civil actions commenced under section
11 717 of the Civil Rights Act of 1964.”,

12 (C) in subsection (f)—

13 (i) by inserting “(1)” after “(f)”,

14 (ii) by striking “section 12(b)” and insert-
15 ing “sections 12(b) and 4(d)”, and

16 (iii) by adding at the end the following:

17 “(2)(A) Subject to subparagraph (B), an unlawful
18 personnel action of the kind described in section 4(d) is
19 established under subsection (a) if an employee or appli-
20 cant for employment demonstrates that his opposing any
21 practice made an unlawful employment practice by sub-
22 section (a), his making a charge, testifying, assisting, or
23 participating in any manner in an investigation, proceed-
24 ing, or hearing under this section, or his communicating
25 with the Congress regarding discrimination in violation of

1 subsection (a) was a contributing factor in an adverse per-
2 sonnel action that was taken or is to be taken against such
3 employee or applicant.

4 “(B) On a claim in which a Federal employee proves
5 a violation under subparagraph (A) and a respondent
6 demonstrates, on the basis of the evidentiary standard
7 specified in section 1221(e)(2) of title 5 of the United
8 States Code, that the respondent would have taken the
9 same personnel action in the absence of the impermissible
10 motivating factor, the court—

11 “(i) may grant declaratory relief, injunctive re-
12 lief (except as provided in clause (ii)), and attorney’s
13 fees and costs demonstrated to be directly attrib-
14 utable only to the pursuit of a claim under subpara-
15 graph (A); and

16 “(ii) shall not award damages or issue an order
17 requiring any admission, reinstatement, hiring, pro-
18 motion, or payment not described in clause (i).”,

19 (2) Section 505 of the Rehabilitation Act of 1973 (29
20 U.S.C. 794a) is amended—

21 (A) in subsection (a)(1)—

22 (i) by inserting “(A)” after “(a)(1)”,

23 (ii) by striking “706(k)” and inserting
24 “706(j)”,

1 (iii) by striking “through (k)” and insert-
 2 ing “through (j)”, and

3 (iv) by adding at the end the following:

4 “(B) The first sentence of this paragraph, as in effect
 5 immediately before the effective date of the Federal Em-
 6 ployee Fairness Act of 1997, shall apply with respect to
 7 employment in the Library of Congress.”, and

8 (B) in subsection (b) by striking “In” and in-
 9 serting “Except as provided in subsection (a)(1),
 10 in”.

11 (b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—
 12 If a complaint filed under section 15 of the Age Discrimi-
 13 nation in Employment Act of 1967 (29 U.S.C. 633a), or
 14 section 501 of the Rehabilitation Act of 1973 (29 U.S.C.
 15 791)), with the Equal Employment Opportunity Commis-
 16 sion is pending in the period beginning on the date of the
 17 enactment of this Act and ending on December 31, 1998,
 18 the individual who filed such complaint may commence a
 19 civil action under such section not later than June 30,
 20 1999.

21 **SEC. 4. AMENDMENTS TO TITLE 5 OF THE UNITED STATES**
 22 **CODE.**

23 (a) GRIEVANCE PROCEDURES.—Section 7121 of title
 24 5, United States Code, is amended—

1 (1) in subsection (a)(1) by inserting “adminis-
 2 trative” after “exclusive”, and

3 (2) in subsection (d)—

4 (A) by inserting “(1)” after “(d)”,

5 (B) in the first sentence by inserting “, in
 6 the discretion of the aggrieved employee,” after
 7 “may”, and

8 (C) in the last sentence by striking “Selec-
 9 tion” and all that follows through “any other”,
 10 and inserting the following:

11 “(2) An employee may commence, not later than 120
 12 days after a final decision, a civil action in an appropriate
 13 district court of the United States for de novo review of
 14 a”.

15 (b) ACTIONS INVOLVING DISCRIMINATION.—Section
 16 7702 of title 5, United States Code, is amended to read
 17 as follows:

18 **“§ 7702. Actions involving discrimination**

19 “(a)(1) Notwithstanding any other provision of law,
 20 in the case of any employee or applicant for employment
 21 who—

22 “(A) is affected by—

23 “(i) an action which the employee or appli-
 24 cant may appeal to the Merit Systems Protec-
 25 tion Board, or

1 “(ii) an action, not described in clause
2 (i)—

3 “(I) on the part the Equal Employ-
4 ment Opportunity Commission, and

5 “(II) with respect to which the em-
6 ployee or applicant makes an election
7 under section 717(e)(2)(B)(i)(II) of the
8 Civil Rights Act of 1964, and

9 “(B) alleges that a basis for the action was dis-
10 crimination prohibited by—

11 “(i) section 717 of the Civil Rights Act of
12 1964 (42 U.S.C. 2000a–16),

13 “(ii) section 6(d) of the Fair Labor Stand-
14 ards Act of 1938 (29 U.S.C. 206(d)),

15 “(iii) section 501 of the Rehabilitation Act
16 of 1973 (29 U.S.C. 791),

17 “(iv) sections 12 and 15 of the Age Dis-
18 crimination in Employment Act of 1967 (29
19 U.S.C. 631, 633a), or

20 “(v) any rule, regulation, or policy directive
21 prescribed under any provision of law described
22 in clauses (i) through (iv) of this subparagraph,
23 the employee or applicant may raise the action as provided
24 in paragraph (2).

1 “(2) For purposes of paragraph (1), the employee
2 shall raise the action by filing a complaint in accordance
3 with section 717 of the Civil Rights Act of 1964 and shall
4 make a request described in section 717(e)(2)(B)(i) select-
5 ing the procedures specified in one of the following sub-
6 paragraphs:

7 “(A) The administrative and judicial procedures
8 provided under sections 7701 and 7703.

9 “(B) The administrative and judicial procedures
10 provided under section 7121.

11 “(C) The administrative and judicial procedures
12 provided under section 717 of the Civil Rights Act
13 of 1964.

14 “(3) The agency (including the Board and the Equal
15 Employment Opportunity Commission) that carries out
16 such procedures shall apply the substantive law that is ap-
17 plied by the agency that administers the particular law
18 referred to in subsection (a)(1) that prohibits the conduct
19 alleged to be the basis of the action referred to in sub-
20 section (a)(1)(A).

21 “(b) If—

22 “(1) an employee elects the procedures specified
23 in subsection (a)(2)(C), and

24 “(2) the Equal Employment Opportunity Com-
25 mission dismisses under section 717(f)(5)(A) of the

1 Civil Rights Act of 1964 a claim that is based on
2 the action raised by the employee,
3 then the employee shall have 20 days in which to raise
4 the action under the procedures specified in subparagraph
5 (A) or (B) of subsection (a)(2), except that no allegation
6 of a kind described in subsection (a)(1)(B) may be raised
7 under this subsection.

8 “(c) If at any time after the 120th day following the
9 receipt under section 717(e)(3)(B) of the Civil Rights Act
10 of 1964 of a complaint as a result of an election made
11 under section 717(e)(2)(B)(i) of the Civil Rights Act of
12 1964 to raise an action under the procedures specified in
13 subsection (a)(2)(A) there is no judicially reviewable ac-
14 tion, an employee shall be entitled to file, not later than
15 240 days after making such election, a civil action in an
16 appropriate district court of the United States for de novo
17 review of the action raised under subsection (a).

18 “(d) Nothing in this section shall be construed to af-
19 fect the right to trial de novo under any provision of law
20 described in subsection (a)(1) after a judicially reviewable
21 action.”.

22 (c) DISCIPLINARY ACTION.—(1) Section 1214 of title
23 5, United States Code, is amended by adding at the end
24 the following:

1 “(g)(1) Whenever the Office of Special Counsel re-
2 ceives any copy of an order, in accordance with section
3 717(m) of the Civil Rights Act of 1964, with respect to
4 a claim arising under section 717 of the Civil Rights Act
5 of 1964, section 15(a) of the Age Discrimination in Em-
6 ployment Act of 1967, or section 501 of the Rehabilitation
7 Act of 1973, the Special Counsel shall investigate the mat-
8 ter to the extent necessary to determine whether there are
9 reasonable grounds to believe that a prohibited personnel
10 practice described in section 2302(b)(1) has occurred and,
11 if so, shall seek the appropriate disciplinary action under
12 section 1215.

13 “(2) A determination under this subsection shall be
14 made not later than 180 days after the appropriate date
15 under paragraph (3) for the last applicable event described
16 in such paragraph.

17 “(3)(A) With respect to a claim—

18 “(i) to which an order issued by an administra-
19 tive judge of the Equal Employment Opportunity
20 Commission applies, and

21 “(ii) with respect to which the aggrieved em-
22 ployee neither—

23 “(I) commences a civil action in accord-
24 ance with section 717(f)(7)(E)(i) of the Civil
25 Rights Act of 1964, nor

1 “(II) requests appellate review in accord-
2 ance with section 717(f)(7)(E)(ii) of the Civil
3 Rights Act of 1964,
4 the appropriate date is the date on which the Office of
5 Special Counsel receives a copy of an order (referred to
6 in paragraph (1)) from the administrative judge.

7 “(B) With respect to a claim—

8 “(i) to which an order issued by the Equal Em-
9 ployment Opportunity Commission applies, and

10 “(ii) with respect to which the aggrieved em-
11 ployee does not commence a civil action in accord-
12 ance with section 717(g)(3)(D),

13 the appropriate date is the date on which the Office of
14 Special Counsel receives a copy of an order (referred to
15 in paragraph (1)) from the Commission.

16 “(C) With respect to a claim to which a final judg-
17 ment issued by a court of the United States applies, the
18 appropriate date is the date on which the Office of Special
19 Counsel receives a copy of an order (referred to in para-
20 graph (1)) from such court.

21 “(4) For the purpose of this subsection—

22 “(A) the term ‘order’ means an order issued on
23 the merits;

24 “(B) the term ‘judgment’ means a judgment is-
25 sued on the merits; and

1 “(C) the term ‘final judgment’ means a judgment
2 that is either—

3 “(i) not reviewed by any other court that
4 has authority to review such judgment; or

5 “(ii) not reviewable by any other court.”.

6 (2) Section 1218 of title 5, United States Code, is
7 amended—

8 (A) by inserting “(a)” before the first sentence;
9 and

10 (B) by adding at the end the following:

11 “(b) Any statistical or other information provided
12 under the first sentence of subsection (a) shall specify with
13 respect to each particular prohibited personnel practice,
14 the extent to which such information relates to any matter
15 referred to in section 1214(g), the disposition of such
16 practice, and the basis for such disposition.”.

17 (d) RECORDKEEPING.—(1) Chapter 23 of title 5,
18 United States Code, is amended by adding at the end the
19 following:

20 **“§ 2306. Federal personnel records**

21 “(a) For the purpose of this section—

22 “(1) the term ‘personnel action’ has the mean-
23 ing given such term in section 2302(a)(2)(A);

24 “(2) the term ‘record’ has the meaning given
25 such term in section 552a(a)(4); and

1 “(3) the term ‘employee’ means an employee or
2 applicant for employment in any entity of the Fed-
3 eral Government to which—

4 “(A) section 717(a) of the Civil Rights Act
5 of 1964 applies;

6 “(B) section 501 of the Rehabilitation Act
7 of 1973 applies; or,

8 “(C) sections 12 and 15 of the Age Dis-
9 crimination in Employment Act of 1967 apply;
10 but does not include any employee or applicant for
11 employment with respect to whom section 117, or
12 title III (excluding section 320), of the Civil Rights
13 Act of 1991 applies.

14 “(b) Records relating to any personnel action taken
15 with respect to an employee shall be maintained by the
16 employing authority for at least the greater of—

17 “(1) 270 days after the effective date of the
18 personnel action to which such records relate; or

19 “(2) the period of time otherwise required
20 under applicable provisions of law, rule, or regula-
21 tion, if any.

22 “(c) The Office of Personnel Management, in con-
23 sultation with the Equal Employment Opportunity Com-
24 mission, shall issue guidelines for the implementation of

1 this section by an entity of the Federal Government (as
2 defined in section 701 of the Civil Rights Act of 1964).”.

3 (2) The table of sections for chapter 23 of title 5,
4 United States Code, is amended by adding at the end the
5 following:

“2306. Federal personnel records.”.

6 (e) CONFORMING AMENDMENTS.—Section 7703(b)
7 of title 5, United States Code, is amended—

8 (1) in paragraph (1) by striking “(1) Except as
9 provided in paragraph (2) of this subsection, a” and
10 inserting “A”, and

11 (2) by striking paragraph (2).

12 (f) RIGHT TO INTERVENE.—Section 1212(c)(2) of
13 title 5, United States Code, is amended—

14 (1) by striking “(2)” and inserting “(2)(A)”;
15 and

16 (2) by adding at the end the following:

17 “(B) Consent under subparagraph (A) shall not be
18 required, in the case of an appeal from an action, if—

19 “(i) section 7513(d) is the provision making the
20 action appealable to the Board;

21 “(ii) the appeal is brought in a matter with re-
22 spect to which a copy of an order has been received
23 by the Office of Special Counsel under section
24 717(m) of the Civil Rights Act of 1964; and

1 “(iii) 1 of the grounds for the action being ap-
 2 pealed is discrimination of a type described in sec-
 3 tion 2302(b)(1).”.

4 **SEC. 5. TECHNICAL AMENDMENTS.**

5 Section 717(b) of the Civil Rights Act of 1964 (42
 6 U.S.C. 2000e–16(b)) is amended by striking “Civil Service
 7 Commission” each place it appears and inserting “Com-
 8 mission”.

9 **SEC. 6. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
 10 **TICE RULES.**

11 (a) ISSUANCE OF CERTAIN RULES AND GUIDE-
 12 LINES.—After providing notice in accordance with section
 13 553(b) of title 5, United States Code, and not later than
 14 1 year after the date of the enactment of this Act, the
 15 Equal Employment Opportunity Commission shall issue—

16 (1) rules to assist entities of the Federal Gov-
 17 ernment to comply with section 717(d) of the Civil
 18 Rights Act of 1964, as added by section 2 of this
 19 Act,

20 (2) rules establishing—

21 (A) a uniform written official notice to be
 22 used to comply with section 717 of such Act, as
 23 added by section 2 of this Act, and

24 (B) detailed requirements applicable to col-
 25 lecting and preserving documents and informa-

1 tion under section 717(d), as added by section
2 2 of this Act,

3 (3) guidelines describing an alternative dispute
4 resolution process that may be used by entities of
5 the Federal Government (as defined in section
6 701(p) of the Civil Rights Act of 1964 (7 U.S.C.
7 2000e(p)), in their discretion, consistent with the
8 administrative process applicable to claims under
9 section 717 of such Act, and

10 (4) rules establishing the criteria, standards,
11 and process for obtaining Commission simultaneous
12 approval of—

13 (A) a process for precomplaint conciliation
14 of the kind required by section 717(c)(1)(A)(i)
15 of the Civil Rights Act of 1964, and

16 (B) an alternative dispute resolution proc-
17 ess for purposes of such section.

18 (b) PUBLICATION OF PROPOSED GUIDELINES.—Not
19 later than 180 days after the date of the enactment of
20 this Act, the Equal Employment Opportunity Commission
21 shall publish in the Federal Register proposed guidelines
22 of the kind described in subsection (a)(3) and proposed
23 rules of the kind described in subsection (a)(4), and allow
24 not less than 30 days for public comment before issuing

1 guidelines and rules under paragraphs (3) and (4) of sub-
2 section (a).

3 (c) STANDARDS FOR ALTERNATIVE DISPUTE RESO-
4 LUTION PROCESSES.—The guidelines required by sub-
5 sections (a) and (b) shall provide for alternative dispute
6 resolution processes that include—

7 (1) procedural rules applicable to the operation
8 of such processes, including a description of the
9 roles of Federal employees and the authorized rep-
10 resentatives of such employees in such processes,

11 (2) an opportunity for meaningful participation
12 by Federal employees, and their authorized rep-
13 resentatives if appropriate, in the design and devel-
14 opment of such processes and such rules,

15 (3) methods for selecting and training qualified
16 facilitators, including the use of nonparty neutrals
17 not from the employing activities,

18 (4) providing to the parties access to relevant
19 documents and witnesses,

20 (5) application of decisional law and legal prin-
21 ciples,

22 (6) periodic evaluation of the efficacy of
23 facilitators,

24 (7) periodic evaluation of the efficacy of the al-
25 ternative dispute resolution process and conciliation

1 (including precomplaint conciliation), and reporting
2 on the resolution and settlement of disputes under
3 such process, and

4 (8) confidentiality of communications (including
5 offers of settlement) among participants in such
6 process.

7 (d) IDENTIFICATION OF APPROVED ALTERNATIVE
8 DISPUTE RESOLUTION PROCESSES.—Not later than 21
9 months after the date of the enactment of this Act, and
10 annually thereafter, the Equal Employment Opportunity
11 Commission shall publish in the Federal Register the
12 names of the entities of the Federal Government (as de-
13 fined in section 701 of the Civil Rights Act of 1964) that
14 provide a voluntary alternative dispute resolution process
15 approved by the Commission in accordance with the rules
16 in effect under subsection (a)(4).

17 (e) VOLUNTARY SETTLEMENT PROGRAM.—The
18 Equal Employment Opportunity Commission shall issue
19 rules establishing a program and procedures, consistent
20 with the administrative adjudication of claims under sec-
21 tion 717 of the Civil Rights Act of 1964 as amended by
22 this Act, to foster the voluntary settlement of such claims.

23 (f) REPORTING REQUIREMENT.—Section 705 of the
24 Civil Rights Act of 1964 (42 U.S.C. 2000–e4) is amended
25 by adding at the end the following:

1 “(l) The Commission shall include in each report
2 made under subsection (e) the following information sepa-
3 rately identified with respect to each entity of the Federal
4 Government for the period for which such report is made:

5 “(1) The number of Federal employees who
6 participated in conciliation provided under section
7 717(c)(1)(A)(ii) as added by the Federal Employee
8 Fairness Act of 1997.

9 “(2) The number of such employees who en-
10 tered into a settlement under section 717, as amend-
11 ed by such Act, for relief of any kind.

12 “(3) The number of such employees who filed
13 complaints under such section 717.

14 “(4) The number of other Federal employees
15 who filed complaints under such section.

16 The head of each such entity shall provide such informa-
17 tion timely to the Commission to enable the Commission
18 to comply with this subsection.”.

19 **SEC. 7. ISSUANCE OF RULES REGARDING CLASSIFIED**
20 **INFORMATION.**

21 (a) RULES REQUIRED.—The Equal Employment Op-
22 portunity Commission, in consultation with the Director
23 of Central Intelligence, the Secretary of Defense, and the
24 Director of the Information Security Oversight Office of
25 the General Services Administration, shall issue rules to

1 ensure the protection of classified information and na-
2 tional security information in administrative proceedings
3 under section 717 of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e–16). Such rules shall include a requirement
5 that complaints filed under section 717(c) of such Act that
6 bear on classified information shall be handled only by ad-
7 ministrative judges, and other personnel, who have appro-
8 priate security clearances.

9 (b) DEFINITION.—For purposes of subsection (a),
10 the term “classified information” has the meaning given
11 such term in section 606(1) of the National Security Act
12 of 1947 (50 U.S.C. 426(1)).

13 **SEC. 8. RULES OF CONSTRUCTION.**

14 Any reference in any law (other than title VII of the
15 Civil Rights Act of 1964) to any provision of title VII of
16 the Civil Rights Act of 1964 amended by this Act shall
17 be deemed to be a reference to such provision as amended
18 by this Act.

19 **SEC. 9. SENSE OF THE CONGRESS.**

20 (a) APPROPRIATION OF FUNDS.—It is the sense of
21 the Congress that because the amendments made by this
22 Act—

23 (1) impose on the Equal Employment Oppor-
24 tunity Commission additional administrative respon-

15 SEC. 10. EFFECTIVE DATES; APPLICATION OF AMEND-
16 MENTS.

(b) EFFECTIVE DATE OF SECTIONS 6 AND 7.—Sec-
tions 6 and 7 shall take effect on the date of the enact-
ment of this Act.

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1 (1) complaints filed under section 717 of the
2 Civil Rights Act of 1964 (42 U.S.C. 2000e–16) be-
3 fore the effective date of this Act; and

4 (2) proceedings pending under title 5 of the
5 United States Code before the effective date of this
6 Act.

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